

CONFERENCE COMMITTEE REPORT DIGEST FOR EHB 1230

Citations Affected: IC 5-3-1; IC 6-1.1-15-11; IC 36-2-6; IC 36-4.

Synopsis: Publication of notices. Requires a notice published in a newspaper to also be posted on the newspaper's Internet web site, if the newspaper maintains an Internet web site. Prohibits a newspaper from charging a fee for posting of the Internet notice. Eliminates the requirement that a city publish the ordinance setting the salaries of elected city officers. Requires all political subdivisions with a budget of at least \$300,000 and the power to levy a tax to publish an annual report (if not required under any other statute to publish an annual report). Allows the officers of a political subdivision publishing notice to publish in only one newspaper in the political subdivision (instead of two newspapers), if only one newspaper is published in the political subdivision. After December 31, 2009, allows a newspaper or qualified publication to annually increase the basic publication charges that were in effect during the previous year by not more than 2.75%. Requires public notice advertisements to be in at least 7 point type. Eliminates the requirement that counties publish claims (except for court allowances) before payment. (Current law does not require municipalities to follow this procedure.) Makes conforming amendments. Allows the board of public works and safety of a third class city to consist of three or five members (as determined by the mayor). Requires a second class city and a third class city to publish notice that the total number of board members has been increased or decreased. **(This conference committee report makes changes in the permitted annual increase in newspaper publication costs.)**

Effective: July 1, 2009.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill No. 1230 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 5-3-1-1 IS AMENDED TO READ AS FOLLOWS
- 3 [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) The cost of all public notice
- 4 advertising which any elected or appointed public official or
- 5 governmental agency is required by law to have published, or orders
- 6 published, for which the compensation to the newspapers or qualified
- 7 publications publishing such advertising is drawn from and is the
- 8 ultimate obligation of the public treasury of the governmental unit
- 9 concerned with the advertising shall be charged to and collected from
- 10 the proper fund of the public treasury and paid over to the newspapers
- 11 or qualified publications publishing such advertising, after proof of
- 12 publication and claim for payment has been filed.
- 13 (b) The basic charges for publishing public notice advertising shall
- 14 be by the line and shall be computed based on a square of two hundred
- 15 and fifty (250) ems at the following rates:
- 16 (1) Before January 1, 1996, three dollars and thirty cents (\$3.30)
- 17 per square for the first insertion in newspapers or qualified
- 18 publications plus one dollar and sixty-five cents (\$1.65) per
- 19 square for each additional insertion in newspapers or qualified
- 20 publications.
- 21 (2) After December 31, 1995, and before December 31, 2005, a
- 22 newspaper or qualified publication may, effective January 1 of

any year, increase the basic charges by five percent (5%) more than the basic charges that were in effect during the previous year. However, the basic charges for the first insertion of a public notice in a newspaper or qualified publication may not exceed the lowest classified advertising rate charged to advertisers by the newspaper or qualified publication for comparable use of the same amount of space for other purposes.

(3) After December 31, 2009, a newspaper or qualified publication may, effective January 1 of any year, increase the basic charges by not more than two and three-quarters percent (2.75%) more than the basic charges that were in effect during the previous year. However, the basic charges for the first insertion of a public notice in a newspaper or qualified publication may not exceed the lowest classified advertising rate charged to advertisers by the newspaper or qualified publication for comparable use of the same amount of space for other purposes and must include all multiple insertion discounts extended to the newspaper's other advertisers.

An additional charge of fifty percent (50%) shall be allowed for the publication of all public notice advertising containing rule or tabular work.

(c) All public notice advertisements shall be set in solid type ~~not larger than the type used in the regular reading matter of the newspaper or qualified publication; that is at least 7 point type~~, without any leads or other devices for increasing space. All public notice advertisements shall be headed by not more than two (2) lines, neither of which shall total more than four (4) solid lines of the type in which the body of the advertisement is set. Public notice advertisements may be submitted by an appointed or elected official or a governmental agency to a newspaper or qualified publication in electronic form, if the newspaper or qualified publication is equipped to accept information in compatible electronic form.

(d) Each newspaper or qualified publication publishing public notice advertising shall submit proof of publication and claim for payment in duplicate on each public notice advertisement published. For each additional proof of publication required by a public official, a charge of one dollar (\$1) per copy shall be allowed each newspaper or qualified publication furnishing proof of publication.

(e) The circulation of a newspaper or qualified publication is determined as follows:

(1) For a newspaper, by the circulation stated on line 10.C. (Total Paid and/or Requested Circulation of Single Issue Published Nearest to Filing Date) of the Statement of Ownership, Management and Circulation required by 39 U.S.C. 3685 that was filed during the previous year.

(2) For a qualified publication, by a verified affidavit filed with each governmental agency that has public notices the qualified publication wants to publish. The affidavit must:

(A) be filed with the governmental agency before January 1 of each year; and

(B) attest to the circulation of the qualified publication for the issue published nearest to October 1 of the previous year.

SECTION 2. IC 5-3-1-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 1.5. (a) This section applies after June 30, 2009, to a notice that must be published in accordance with this chapter.**

(b) If a newspaper maintains an Internet web site, a notice that is published in the newspaper must also be posted on the newspaper's web site. The notice must appear on the web site on the same day the notice appears in the newspaper.

(c) The state board of accounts shall develop a standard form for notices posted on a newspaper's Internet web site.

(d) A newspaper may not charge a fee for posting a notice on the newspaper's Internet web site under this section.

SECTION 3. IC 5-3-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 2. (a) This section applies only when notice of an event is required to be given by publication in accordance with ~~IC 5-3-1~~ this chapter.**

(b) If the event is a public hearing or meeting concerning any matter not specifically mentioned in subsection (c), (d), (e), (f), (g), or (h) notice shall be published one (1) time, at least ten (10) days before the date of the hearing or meeting.

(c) If the event is an election, notice shall be published one (1) time, at least ten (10) days before the date of the election.

(d) If the event is a sale of bonds, notes, or warrants, notice shall be published two (2) times, at least one (1) week apart, with:

(1) the first publication made at least fifteen (15) days before the date of the sale; and

(2) the second publication made at least three (3) days before the date of the sale.

(e) If the event is the receiving of bids, notice shall be published two (2) times, at least one (1) week apart, with the second publication made at least seven (7) days before the date the bids will be received.

(f) If the event is the establishment of a cumulative or sinking fund, notice of the proposal and of the public hearing that is required to be held by the political subdivision shall be published two (2) times, at least one (1) week apart, with the second publication made at least three (3) days before the date of the hearing.

(g) If the event is the submission of a proposal adopted by a political subdivision for a cumulative or sinking fund for the approval of the department of local government finance, the notice of the submission shall be published one (1) time. The political subdivision shall publish the notice when directed to do so by the department of local government finance.

(h) If the event is the required publication of an ordinance, notice of the passage of the ordinance shall be published one (1) time within thirty (30) days after the passage of the ordinance.

(i) If the event is one about which notice is required to be published after the event, notice shall be published one (1) time within thirty (30) days after the date of the event.

(j) If the event is anything else, notice shall be published two (2)

times, at least one (1) week apart, with the second publication made at least three (3) days before the event.

(k) ~~in case~~ **If** any officer charged with the duty of publishing any notice required by law is unable to procure advertisement:

(1) at the price fixed by law; ~~or~~

(2) **because** the newspaper refuses to publish the advertisement;
or

(3) **because the newspaper refuses to post the advertisement on the newspaper's Internet web site (if required under section 1.5 of this chapter);**

it is sufficient for the officer to post printed notices in three (3) prominent places in the political subdivision, instead of ~~advertisement publication of the notice~~ in newspapers **and on an Internet web site (if required under section 1.5 of this chapter).**

(l) If a notice of budget estimates for a political subdivision is published as required in IC 6-1.1-17-3, and the published notice contains an error due to the fault of a newspaper, the notice as presented for publication is a valid notice under this chapter.

(m) Notwithstanding subsection (j), if a notice of budget estimates for a political subdivision is published as required in IC 6-1.1-17-3, and if the notice is not published at least ten (10) days before the date fixed for the public hearing on the budget estimate due to the fault of a newspaper, the notice is a valid notice under this chapter if it is published one (1) time at least three (3) days before the hearing.

SECTION 4. IC 5-3-1-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 3.5. (a) This section applies to each political subdivision that has:**

(1) **an annual budget of at least three hundred thousand dollars (\$300,000); and**

(2) **the power to levy taxes.**

(b) **This section does not apply to a political subdivision that is required to publish an annual report under any other statute.**

(c) **As used in this section, "political subdivision" has the meaning set forth in IC 36-1-2-13.**

(d) **Not later than sixty (60) days after the expiration of each calendar year, a political subdivision shall publish an annual report of the receipts and expenditures of the political subdivision during the preceding calendar year.**

(e) **The annual reports required by this section shall be published only one (1) time per year.**

SECTION 5. IC 5-3-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 4. (a)** Whenever officers of a political subdivision are required to publish a notice affecting the political subdivision, they shall publish the notice in two (2) newspapers published in the political subdivision.

(b) This subsection applies to notices published by county officers. If there is only one (1) newspaper published in the county, then publication in that newspaper alone is sufficient.

(c) This subsection applies to notices published by city, town, or school corporation officers. If there is only one (1) newspaper

published in the municipality or school corporation, then publication in that newspaper alone is sufficient. If no newspaper is published in the municipality or school corporation, then publication shall be made in a newspaper published in the county in which the municipality or school corporation is located and that circulates within the municipality or school corporation. ~~The notice shall be posted:~~

~~(1) at or near the city or town hall or school administration building; or~~

~~(2) at the:~~

~~(A) public building where the governing body of the respective city, town, or school corporation meets; or~~

~~(B) post office in the municipality or school corporation (or at the bank if there is no post office);~~

~~if the municipality does not have a city or town hall; or the school corporation does not have an administration building.~~

(d) This subsection applies to notices published by officers of political subdivisions not covered by subsection (a) or (b). ~~including township officers.~~ If there is only one (1) newspaper published in the political subdivision, then the notice shall be published in that newspaper. ~~and if another newspaper is published in the county and circulates within the political subdivision in the other newspaper.~~ If no newspaper is published in the political subdivision, then publication shall be made in a newspaper published in the county and that circulates within the political subdivision.

(e) This subsection applies to a political subdivision, including a city, town, or school corporation. Notwithstanding any other law, if a political subdivision has territory in more than one (1) county, public notices that are required by law or ordered to be published must be given as follows:

(1) By publication in two (2) newspapers published within the boundaries of the political subdivision.

(2) If only one (1) newspaper is published within the boundaries of the political subdivision, by publication in that newspaper and in some other newspaper:

(A) published in any county in which the political subdivision extends; and

(B) that has a general circulation in the political subdivision.

(3) If no newspaper is published within the boundaries of the political subdivision, by publication in two (2) newspapers that:

(A) are published in any counties into which the political subdivision extends; and

(B) have a general circulation in the political subdivision.

(4) If only one (1) newspaper is published in any of the counties into which the political subdivision extends, by publication in that newspaper if it circulates within the political subdivision.

(f) A political subdivision may, in its discretion, publish public notices in a qualified publication or additional newspapers to provide supplementary notification to the public. The cost of publishing supplementary notification is a proper expenditure of the political subdivision.

SECTION 6. IC 6-1.1-15-11 IS AMENDED TO READ AS

FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 11. (a) If a review or appeal authorized under this chapter results in a reduction of the amount of an assessment or if the department of local government finance on its own motion reduces an assessment, the taxpayer is entitled to a credit in the amount of any overpayment of tax on the next successive tax installment, if any, due in that year. After the credit is given, the county auditor shall:

- (1) determine if a further amount is due the taxpayer; and
- (2) if a further amount is due the taxpayer, notwithstanding IC 5-11-10-1 and IC 36-2-6-2, without a claim or an appropriation being required, pay the amount due the taxpayer.

The county auditor shall charge the amount refunded to the taxpayer against the accounts of the various taxing units to which the overpayment has been paid. The county auditor shall notify the county executive of the payment of the amount due. ~~and publish the allowance in the manner provided in IC 36-2-6-3.~~

(b) The notice **provided** under ~~subsection (a)(2)~~ **is subsection (a)** **shall be** treated as a claim by the taxpayer for the amount due referred to in ~~that subsection~~: **subsection (a)(2).**

SECTION 7. IC 36-2-6-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) This section does not apply to claims for salaries fixed in a definite amount by ordinance or statute, per diem of jurors, and salaries of officers of a court.

(b) The county auditor shall ~~publish all claims that have been filed for the consideration of the county executive and shall publish all allowances made by courts of the county. Claims filed for the consideration of the executive shall be published at least three (3) days before each session of the executive; and~~ Court allowances shall be published at least three (3) days before the issuance of warrants in payment of those allowances. ~~In publication of itemized statements filed by assistant highway supervisors for consideration of the executive; the auditor shall publish the name of each party and the total amount due each party named in the itemized statements. Notice of claims filed for consideration of the county executive must state their amounts and to whom they are made. Claims and Allowances subject to this section shall be published as prescribed by IC 5-3-1 except that only one (1) publication in two (2) newspapers is required.~~

(c) ~~A member of the county executive who considers or allows a claim; or~~ A county auditor who issues warrants in payment of allowances made by ~~the county executive or~~ a court of the county, before compliance with subsection (b), commits a Class C infraction.

(d) A county auditor shall publish one (1) time in accordance with IC 5-3-1 a notice of all allowances made by a circuit or superior court. The notice must be published within sixty (60) days after the allowances are made and must state their amount, to whom they are made, and for what purpose they are made.

SECTION 8. IC 36-2-6-4.5, AS AMENDED BY P.L.146-2008, SECTION 688, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4.5. (a) A county executive may adopt an ordinance allowing money to be disbursed for lawful county purposes under this section.

(b) Notwithstanding IC 5-11-10, with the prior written approval of the board having jurisdiction over the allowance of claims, the county auditor may make claim payments in advance of board allowance for the following kinds of expenses if the county executive has adopted an ordinance under subsection (a):

- (1) Property or services purchased or leased from the United States government, its agencies, or its political subdivisions.
- (2) License or permit fees.
- (3) Insurance premiums.
- (4) Utility payments or utility connection charges.
- (5) General grant programs where advance funding is not prohibited and the contracting party posts sufficient security to cover the amount advanced.
- (6) Grants of state funds authorized by statute.
- (7) Maintenance or service agreements.
- (8) Leases or rental agreements.
- (9) Bond or coupon payments.
- (10) Payroll.
- (11) State or federal taxes.
- (12) Expenses that must be paid because of emergency circumstances.
- (13) Expenses described in an ordinance.

(c) Each payment of expenses under this section must be supported by a fully itemized invoice or bill and certification by the county auditor.

(d) The county executive or the county board having jurisdiction over the allowance of the claim shall review and allow the claim at its next regular or special meeting following the preapproved payment of the expense.

~~(e) A payment of expenses under this section must be published in the manner provided under section 3 of this chapter.~~

SECTION 9. IC 36-4-7-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) As used in this section, "compensation" means the total of all money paid to an elected city officer for performing duties as a city officer, regardless of the source of funds from which the money is paid.

(b) The city legislative body shall, by ordinance, fix the annual compensation of all elected city officers. ~~The ordinance must be published under IC 5-3-1, with the first publication at least thirty (30) days before final passage by the legislative body.~~

(c) The compensation of an elected city officer may not be changed in the year for which it is fixed nor may it be reduced below the amount fixed for the previous year.

SECTION 10. IC 36-4-9-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. (a) This section applies only to second class cities.

(b) The city executive shall appoint:

- (1) a city controller;
- (2) a city civil engineer;
- (3) a corporation counsel;
- (4) a chief of the fire department;

(5) a chief of the police department; and

(6) other officers, employees, boards, and commissions required by statute.

(c) The board of public works and safety may be composed of three (3) members or five (5) members appointed by the executive. A member may hold other appointive positions in city government during the member's tenure. IC 36-4-11-2 applies to board member appointments under this section. The executive shall appoint a clerk for the board.

(d) If the board of public works and board of public safety are established as separate boards, each board may be composed of three (3) members or five (5) members who are appointed by the executive. A member may hold other appointive positions in city government during the member's tenure. The executive shall appoint a clerk for each board.

(e) If the executive:

(1) increases the number of members of a board of public works and safety, a board of public works, or a board of public safety from three (3) to five (5) members; or

(2) decreases the number of members of a board of public works and safety, a board of public works, or a board of public safety from five (5) to three (3) members;

the city shall publish notice under IC 5-3-1 of the increase or decrease in members and state the total number of members appointed to the board.

SECTION 11. IC 36-4-9-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) This section applies only to third class cities.

(b) The city executive shall appoint:

(1) a city civil engineer;

(2) a city attorney;

(3) a chief of the fire department;

(4) a chief of the police department; and

(5) other officers, employees, boards, and commissions required by statute.

(c) The board of public works and safety consists of three (3) or five (5) members (as determined by the city executive). The members of the board of public works and safety are:

(1) the city executive; and

(2) two (2) or four (4) persons appointed by the executive.

If the executive increases the number of board members from three (3) to five (5) members or decreases the number of board members from five (5) to three (3) members, the city shall publish notice under IC 5-3-1 of the increase or decrease in members and state the total number of members appointed to the board. IC 36-4-4-2 notwithstanding, a member may hold other appointive or elective positions in city government during the member's tenure. IC 36-4-11-2 applies to board member appointments under this section. The city clerk is the clerk of the board.

(d) If the city legislative body adopts an ordinance under IC 36-4-12 to employ a city manager, the executive may appoint the city manager

1 to a position on the board of public works and safety in place of the
2 executive.

(Reference is to EH 1230 as reprinted March 25, 2009.)

Conference Committee Report
on
Engrossed House Bill 1230

Signed by:

Representative Moses
Chairperson

Senator Buck

Representative Hinkle

Senator Deig

House Conferees

Senate Conferees